

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DORMAN PRODUCTS, INC.,
Plaintiff,

v.

PACCAR, INC.,
Defendant.

CIVIL ACTION

NO. 13-6383

ORDER

AND NOW, this 21st day of February, 2014, upon consideration of Plaintiff Dorman Products, Inc.'s Motion to Dismiss Defendant's Indirect and Willful Infringement Claims Pursuant to Fed. R. Civ. P. 12(b)(6) (Document No. 13, filed December 5, 2013), and the related submissions of the parties, following an Initial Pretrial Conference on February 19, 2014, **IT IS ORDERED** as follows:

1. That part of plaintiff's Motion to Dismiss which seeks dismissal of defendant's counterclaims for indirect infringement and contributory infringement is **DENIED AS MOOT** on the ground that such claims were withdrawn by plaintiff at the Initial Pretrial Conference;¹

2. That part of plaintiff's Motion to Dismiss which seeks dismissal of defendant's counterclaims for willful infringement is **DENIED WITHOUT PREJUDICE** to plaintiff's right to address that issue after completion of discovery by motion for summary judgment. On this issue, the Court rejects plaintiff's argument that, under *In re Seagate Tech., Inc.*, 497 F.3d 1360 (Fed. Cir. 2007), a failure to seek a preliminary injunction constitutes a forfeiture of a willful infringement claim for pre-filing conduct. *See, e.g., SoftView LLC v. Apple Inc.*, No. 10-cv-389, 2012 WL 3061027, at *8 (D. Del. July 26, 2012) ("[T]he Court agrees with SoftView that *Seagate* does not require dismissal of SoftView's willful infringement allegations against the

¹ See Order dated February 19, 2014.

RPX Defendants or AT & T, even though SoftView did not seek a preliminary injunction. The Court agrees with SoftView that *Seagate* states only that a patentee cannot recover enhanced damages based *solely* on an accused infringer's post-filing conduct where the patentee has not sought a preliminary injunction.").

BY THE COURT:

/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.